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August 17, 2012

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Via Federal Express Overnight Delivery

Re: **Answer of TV Max, Inc. to Enforcement Complaint of Post-Newsweek Stations, Houston, Inc., MB Docket No. 12-222, CSR-8694-C**

Enclosed for filing please find an original and two copies of the Answer of TV Max, Inc. to Enforcement Complaint of Post-Newsweek Stations, Houston, Inc. in the above captioned matter.

Additional copies have been sent to the individuals listed on the Certificate of Service attached to the Answer of TV Max.

Please note that Attachment 1, the Declaration of Thomas Balun, is a photocopy of the original. The signed original Supplemental Declaration will be delivered to your office via Federal Express overnight delivery.

Thank you for your assistance.

Sincerely,

Carl Kandutsch

Carl E. Kandutsch
Attorney for TV Max

ORIGINAL

Received & Inspected
AUG 20 2012
FCC Mail Room

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
TV Max, Inc., dba Wavevision	)	MB Docket No. 12-222
	)	CSR-8694-C
Enforcement Complaint Concerning	)	
KPRC-TV, Houston, Texas	)	
	)	

To: Office of the Secretary
Attn: Media Bureau

ANSWER OF TV MAX TO ENFORCEMENT COMPLAINT OF POST-NEWSWEEK STATIONS, HOUSTON, INC.

TV Max, Inc. (dba Wavevision, referred to as "TV Max") by and through its counsel, files this Answer to the Enforcement Complaint ("Complaint") of Post-Newsweek Stations, Houston, Inc. ("Post-Newsweek") concerning TV Max's alleged violation of Section 325(b) of the Communications Act of 1934 (the "Act") and the Commission's rules. The Complaint alleges that since January 1, 2012 to the present, TV Max has retransmitted signals ("Signals") of television broadcast station KPRC-TV in Houston, Texas, a Post-Newsweek affiliate, without Post-Newsweek's consent in violation of Section 325(b) of the Act and Section 76.64[1] of the Commission's rules. Post-Newsweek seeks an Order compelling TV Max to cease retransmission of the Signals and imposing sanctions on TV Max.

STATEMENT OF FACTS

As stated in the Declaration of Thomas Balun[2], TV Max has been under its current management only since June 2010. Prior to its acquisition by Broadband Ventures IV, TV Max was in disarray both financially and operationally; since the acquisition, management has been making a concerted effort to restore the company's profitability while maintaining subscription rates at competitive levels. These efforts have included cutting the costs of operation as well as avoiding new costs wherever possible without sacrificing the quality of the services offered.

TV Max currently holds a cable television franchise with the City of Houston, Texas and serves about 10,000 subscribers in the Houston Designated Market Area ("DMA"). TV Max is unusual among

[1] 47 C.F.R. § 76.64.
[2] Attachment 1 (the "Balun Declaration").

franchised cable operators in that all of its subscribers reside in multi-dwelling unit ("MDU") buildings. TV Max serves 245 MDU buildings in the Houston DMA pursuant to right-of-entry agreements with the building owners. Many of TV Max's subscribers are middle to low-income people.

One component of avoidable costs identified by TV Max's management were costs stemming from retransmission consent fees being demanded by broadcast networks, including Post-Newsweek, for off-air broadcast programming. TV Max had a retransmission consent agreement with Post-Newsweek dated January 1, 2009, which agreement allowed TV Max to retransmit the Signals over TV Max's cable system in exchange for payment of a monthly per subscriber fee; this agreement was due to expire on December 31, 2011. In order to reduce costs – rather than pass them on to subscribers in the form of increased cable rates – during the second half of year 2011, management formulated a plan to qualify for exemption from the retransmission consent regime under Section 76.64(e) of the Commission's rules[3], relating to broadcast signals received by master antenna television ("MATV") facilities. TV Max was and is well-positioned to qualify for this exemption because all of its subscribers reside in MDU buildings.

A. <u>TV Max's MATV Conversion Initiative</u>

Beginning in November 2011, TV Max initiated a campaign to install MATV systems at all MDU buildings served by the company. Implementation of this plan involved several components, including:

(1) Notification of the owners of MDU buildings served by TV Max that TV Max would, at its sole expense, install master antennas on the rooftops of the MDU buildings, which antennas (along with existing in-building distribution wiring) would be owned and controlled by the building owner, and used to make available broadcast television programming to residents at no charge. In November 2011, TV Max sent letters to the owners of all MDU buildings served by the company informing each owner of this plan, and requesting the owner's consent to installation of the MATV systems. Attachment 2 is a photocopy of the sample letter sent to each MDU building served by TV Max. TV Max's management hoped and expected to convert all MDU buildings to MATV systems by the time the Post-Newsweek retransmission consent agreement expired on December 31, 2011.

Since delivering the letters to MDU owners, TV Max has been working diligently and in good faith to complete the installation of property-owned MATV systems at each building served by the company. However, because a small number of building owners objected to the installation of the rooftop antennas, TV Max was unable to complete the MATV conversion of all buildings on schedule. TV Max admits that as of December 31, 2011, when the Post-Newsweek retransmission consent agreement

[3] 47 C.F.R. § 76.64(e).

expired, TV Max had only completed MATV installations on about 50% of the 245 MDU buildings served. Nonetheless, TV Max's failure to complete all installations by January 1, 2012 was *not* attributable to lack of good faith efforts to comply with applicable laws and regulations, and as of July 26, 2012, master antennas have been fully installed and are currently operational at all MDU buildings served by TV Max.

(2) Elimination of off-air signals from the Basic Tier of programming offered to TV Max subscribers for a monthly fee. Beginning in November 2011, the off-air broadcast signals, including the Signals, were de-linked from any tier of pay-television programming, and since then no TV Max subscriber has billed for any off-air broadcast programming, including the KPRC-TV Signals. Since late 2011 and continuing to the present, reception of the Signals has been made available to any resident of an MDU building served by TV Max at no charge, and at the resident's option, regardless of whether or not the resident subscribes to any TV Max pay service.

B. Delivery of Broadcast Signals to MDU Residents

As described in the Balun Declaration, the MATV systems installed by TV Max at MDU buildings allow any resident of those buildings, regardless of whether or not the resident subscribes to any pay service of TV Max, to receive off-air broadcast signals without the use of a set-top box, and without transmission through TV Max's cable system, at no charge. TV Max utilizes diplexers and filters to allow the delivery of local off-air broadcast signals to residents of MDU buildings served by the company. TV Max distributes off-air broadcast signals to occupied units in either of two ways, at the occupant's option:

(1) If the unit is equipped with a digital television or a digital converter, the occupant may receive the broadcaster's off-air digital signal directly through the building's MATV facilities, which are owned and controlled by the MDU building owner; and not by TV Max; alternatively,

(2) If the unit is not equipped with a digital television or a digital converter, the occupant may receive, at no charge, an analog duplication of the off-air signal that has been inserted into the building's MATV system for delivery to the occupant's analog television set.

Each resident of an MDU building served by TV Max may elect to receive off-air programming using either of the two methods described above, at the resident's option and without any monthly charge. These alternative methods of delivery off-air broadcast signals to consumers' television sets serve two corresponding purposes, respectively.

First, by making available to MDU residents the reception of off-air television programming at no charge by means of MATV facilities owned and controlled by the building owners, the MATV systems allow TV Max to qualify for exemption from the retransmission consent regime under Section 76.64(e) of the Commission's rules, and thus to avoid the onerous and discriminatory retransmission consent fees demanded by broadcast networks from small cable operators, in lieu of passing those costs along to consumers in the form of higher cable rates.

Second, the MATV systems allow TV Max to perform a public service in resolving difficult logistical and financial issues facing consumers following the mandatory analog-to-digital conversion of broadcast signals. That conversion requires that in order to continue to receive off-air broadcast signals, but in the newly mandated digital format, consumers must purchase either a new digital television, or a digital-to-analog converter for each analog television set. Many consumers cannot afford to purchase this equipment, and even among those who do acquire digital reception or conversion devices, there are many consumers who find it difficult use them properly without assistance. By making available free digital-to-analog conversion of off-air signals to all residents of its MDU buildings, TV Max provides a public benefit to citizens of Houston, Texas who are unable to resolve these digital conversion issues on their own.

ARGUMENT

A. Background

The Commission is well aware of the enormous difficulties facing small cable operators in competing with larger operators due to (a) ever-rising retransmission consent fees being charged by affiliates of the large broadcast networks, and (b) the vast disparity in fees charged by broadcasters to small and large multi-channel video programming distributors ("MVPDs"), respectively.

Regarding (a), the Commission's recent price survey states that for the 12 month period ending on January 1, 2009, cable operators incurred average increases in monthly programming expenses per subscriber of $1.32 (or 8%) for expanded basic service, from $16.35 in 2007 to $17.67 in 2008. During year 2009, on average, cable rates for the "broadcast basic" tier rose at more than double the rate of inflation, and the situation is surely worse today.[4] According to SNL Kagan, during the third quarter of 2011, the average monthly retransmission fee was about 33 cents per subscriber per month – representing an increase of 27% over the same period in 2010 and 47% over the same period in 2009.[5] Moody's expects retransmission fees to triple to $3.6 billion by the end of 2017.[6] In the face of skyrocketing fees,

[4] *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992*, Report on Cable Industry Prices, MM Docket No. 92-266 (rel. Feb. 14, 2011).
[5] "TV Retrans Fees Soar 27%," http://www.mediapost.com/publications/article/167912/tv-retrans-fees-soar-27.html (accessed July 17, 2012).
[6] "Broadcasters Feel Squeeze – and Will Hike Rates," http://www.multichannel.com/article/477453-Broadcasters_Feel_Squeeze_and_Will_Hike_Fees.php (accessed July 17, 2012).

cable operators are faced with Hobson's choice between passing on the increased fees to consumers in the form of higher rates, or dropping popular programming from the basic channel lineup. Either option undermines the operator's ability to effectively compete.

Regarding (b), while the situation is bleak for MVPDs generally, price discrimination in the retransmission consent fees charged, respectively, to large versus small MVPDs compounds the problem for small cable operators such as TV Max. Data provided to the Commission in MB Docket No. 10-71[7] shows that on average, smaller MVPDs pay retransmission consent fees more than double the transmission consent fees paid by large operators. For example, a study by Professor William Rogerson found that large cable operators pay average retransmission consent fees of $.14 per subscriber per month, while small and mid-sized cable companies pay, on average, at least $.30 per subscriber per month to Big 4 stations for the same programming content.[8] The fees demanded of TV Max by the large networks for broadcast signals are *much higher* than the 30 cents average estimated by Professor Rogerson in May 2010.

The disparate fees charged to small and large cable operators have no basis in broadcasters' costs of delivering the signal. Therefore, according to the Rogerson study, the difference can only be explained by the vastly superior bargaining power possessed by large versus small operators vis-à-vis the Big 4 broadcast networks.[9] In other words, the difference is attributed to price discrimination. Other than dropping popular programming from the basic channel line-up, Operators have no choice but to pass on the higher fees to subscribers in the form of increased cable rates, positioning smaller operators at a significant, unfair and often devastating competitive disadvantage with regard to their larger MVPD rivals. When smaller operators such as TV Max are unable to compete due to price discrimination in retransmission consent fees for "must have" programming content, it is their subscribers – that is, the public at large – that are ultimately victimized.

B. Exemption under 47 C.F.R. § 76.64(e)

The Commission's rules provide an exemption from retransmission consent requirements for signals received by a master antenna television system under certain circumstances:

> The retransmission consent requirements of this section are not applicable to broadcast signals received by master antenna television facilities or by direct over-the-air reception

[7] "Media Bureau Seeks Comment on a Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent, MB Docket No. 10-71, *Public Notice,* DA 10-474 (rel. March 19, 2010) (the "*RTC Public Notice*").

[8] *RTC Public Notice*, Comments of American Cable Association, Appendix A, "The Economic Effects of Price Discrimination in Retransmission Consent Agreements" (filed May 18, 2010) at 11-12.

[9] *Id.* at 5 – 9.

> in conjunction with the provision of service by a multichannel video program distributor provided that the multichannel video program distributor makes reception of such signals available without charge and at the subscribers option and provided further that the antenna facility used for the reception of such signals is either owned by the subscriber or the building owner; or under the control and available for purchase by the subscriber or the building owner upon termination of service.[10]

Parsed into its constituent parts, this means that retransmission consent is not required if: (a) the signal is received by a master antenna television facility; and (b) reception of the signal is made available to subscribers without charge, and at the subscriber's option; and (c) the antenna facility used to receive the signal is either (i) owned by the subscriber or the building owner, or (ii) under the control of and available for purchase by the subscriber or the building owner upon termination of service.

With respect to each of the MDU buildings for which the company holds a right-of-entry agreement with the property owner, TV Max's delivery of the KPRC-TV Signals to MDU residents as of July 26, 2012 meets each of the criteria set forth in Section 76.64(e) of the Commission's rules, and TV Max is therefore exempt from retransmission consent requirements.

1. <u>The Signals are received by master antenna television facilities</u>.

A master antenna television facility consists of a rooftop antenna which captures the available UHF and VHF signals and distributes them by wire to individual dwelling units in an MDU building or complex.[11]

As of July 26, 2012, when master antennas were fully installed and operational at all MDU buildings served by TV Max, off-air broadcast signals, including the KPRC-TV Signals, could be received by and delivered to consumer television sets by means of MATV systems consisting of master antennas installed on the building rooftops and in-building distribution wiring serving each residential unit. As stated in the Balun Declaration, any resident may receive the broadcast signals in one of two ways, at the resident's option: If the resident's unit is equipped with a digital television or a digital converter, the occupant may receive the off-air signal directly through the building's MATV facilities; alternatively, if the resident's unit is not equipped with a digital television or a digital converter, the occupant may choose to receive, at no charge, an analog duplication of the off-air signal that has been inserted into the on-site MATV system for delivery to the subscriber's television set. Therefore, at all MDU buildings at which MATV facilities have been installed, TV Max meets the first requirement of Section 76.64(e), namely, that the "broadcast signals [are] received by master antenna television facilities . . ."

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[10] 47 C.F.R. § 76.64(e).

[11] *See* <u>Federal Communications Commission et al. vs. Beach Communications, Inc.</u>, 508 U.S. 307, 311 (1993).

2. Reception of the Signals is made available at no charge and at the subscriber's option.

As stated in the Declaration of Thomas Balun, beginning in November, 2011, off-air broadcast signals were de-linked from TV Max's basic tier of pay-programming. Since that date, reception of the broadcast signals has been made available by TV Max to any resident of an MDU building served by the company at no charge, and at the resident's option, regardless of whether or not the resident subscribes to any TV Max pay service. Since the retransmission consent agreement with Post-Newsweek expired on December 31, 2011, no resident of any MDU building served by TV Max has been billed for reception of the KPRC-TV Signals. Therefore, at all MDU buildings at which MATV facilities have been installed, TV Max meets the second requirement of Section 76.64(e), namely, that the "multichannel video program distributor makes reception of such signals available without charge and at the subscribers option ..."

3. The antenna facilities used to receive the Signals are owned and controlled by the building owners.

In November 2011, TV Max sent a letter to each owner of an MDU building served by TV Max indicating that a master antenna would soon be installed on the rooftop of the building in order to enable "free access to local off-air channels for your tenants ..." The letter makes it clear that the MATV systems would be installed at TV Max's sole expense, and would be owned by the building owner, and "it will remain in your complex as your property for future use."[12] Therefore, at all MDU buildings at which MATV facilities have been installed – *i.e.*, at all MDU buildings served by TV Max as of July 26, 2012 – TV Max meets the third requirement of Section 76.64(e), namely, that the "antenna facility used for the reception of such signals is either owned by the subscriber or the building owner ..."

4. TV Max is not a standard cable system.

In its Complaint, Post-Newsweek points out that "TV Max's claim to the Section 76.64(e) exemption is ... inconsistent with TV Max's prior behavior" – specifically, TV Max's willingness to enter into the retransmission consent agreement that expired at the end of year 2011. From this premise, Post-Newsweek concludes that TV Max cannot be eligible for exemption under Section 76.64(e) now. That inference is not valid.

As stated in the Balun Declaration, shortly after being acquired by Broadband Ventures IV in June 2010, the new management realized that TV Max could no longer afford to operate as a standard cable system – largely due to the exorbitant and discriminatory retransmission consent fees being charged by large broadcast networks. After all, TV Max was already, at the time of its acquisition, unlike most

[12] Attachment 2.

standard cable systems in that all of its subscribers resided in MDU buildings rather than in single-family homes. In that sense, TV Max was and is a sort of "hybrid" MVPD, sharing characteristics of both traditional cable operators and private cable operators (operating on-site SMATV systems). TV Max was thus well-positioned to take advantage of certain regulatory benefits available to SMATV operators, including exemption from retransmission consent obligations under the MATV exemption. For that reason, in November 2011, TV Max's management moved to *modify* its MDU operations – by installing on-site MATV systems – for the specific purpose of qualifying for exemption under Section 76.64(e) of the Commission's rules. The fact that TV Max entered into a retransmission consent agreement with Post-Newsweek in 2009 does not imply that TV Max cannot be eligible for exemption from retransmission consent requirements in 2012.

As a result of those modifications, TV Max now operates a MATV-cable combination at its MDU properties, similar (but not identical) to the MATV-SMATV combinations that have been used by private cable operators for many years. In 1993, the Commission considered whether or not such MATV-SMATV combinations should be exempt from retransmission consent obligations, and concluded in the affirmative:

> We find that local broadcast signals provided by MATV facilities … on individual dwellings situated within the station's broadcast service area are not subject to retransmission consent, provided that these signals are available without charge at the residents' option. This finding applies to standalone MATV facilities … and to MATV-SMATV combinations, as well as MMDS-SMATV and MMDS-individual antenna combinations. Our finding is based on an analogy between the installation by an individual of an antenna to receive local broadcast signals and the installation of a similar antenna by a building owner or by an MMDS operator on behalf of a building owner or individual. Therefore, in order to be exempt from retransmission consent, the antenna facilities must be owned by the individual subscriber or the building owner. They must not be under the control of the multichannel distributor. The multichannel distributor will therefore be unable to terminate or otherwise limit the availability of local broadcast signals to individual residents.[13]

Thus, it is not only "standalone" MATV systems that qualify for exemption from retransmission consent obligations; MATV combinations such as the combination used by TV Max to distribute broadcast signals to MDU residents should qualify for exemption as well, according to the Commission's own logic

[13] *In re Implementation of the Cable Act*, 8 FCC Rcd 2965, 2998 (1993).

and precedent. Far from "limiting" the availability of local broadcast signals to consumers, TV Max's MDU facilities accomplish the exact opposite result, namely, to ensure, at TV Max's expense, the free availability of those signals to consumers, even those who choose not to subscribe to any pay service, and even after TV Max no long provides cable service to the MDU building in which those consumers reside.

CONCLUSION

Copious evidence presented to the Commission in response to the *RTC Public Notice* demonstrates in stark terms the extraordinary difficulties facing smaller MVPDs trying to compete in the marketplace given excessive, unjustifiable and discriminatory retransmission consent fees demanded by large broadcast networks. In this circumstance, small operators such as TV Max, which possess negligible negotiating power *vis-à-vis* large broadcaster networks, are literally forced to innovate in order to survive.

TV Max's MATV conversion initiative represents just such an attempt to innovate – specifically, a concerted, good faith effort to remain in compliance with its legal obligations while continuing to provide high-quality services for it subscribers at affordable rates in a predatory environment dominated by huge, monolithic content owners and their affiliated cable and satellite distributors. TV Max admits that notwithstanding its best proactive efforts, it failed to fully qualify for the MATV exemption at a small number of MDU buildings between January 1 and July 26, 2012, but this failure was not the result of willful disregard of the law but of unanticipated practical difficulties in implementing the chosen solution. Moreover, since July 26, 2012, TV Max has not retransmitted the KPRC-TV Signals or any other broadcast signals, but has made those signals available to consumers at no charge by means of MATV facilities that it neither owns nor controls. The evidence does not justify the imposition of punitive sanctions that would have the effect of eliminating TV Max from the market altogether.

Respectfully submitted,

TV Max, Inc., d.b.a. Wavevision

By: Carl Kandutsch

Carl E. Kandutsch
Attorney at Law
2520 Avenue K, Ste. 700-760
Plano, Texas 75074
(207) 659-6247

Dated: August 17, 2012

ATTACHMENT 1

DECLARATION OF THOMAS BALUN

I, Thomas Balun, hereby state as follows:

1. I am the CEO of TV Max, Inc. (dba Wavevision, referred to herein as "TV Max"). I submit this Declaration in connection with the Answer of TV Max to Enforcement Complaint of Post-Newsweek Stations, Houston, Inc. ("Post-Newsweek").

2. TV Max currently holds a cable television franchise with the City of Houston, Texas and serves about 10,000 subscribers in the Houston Designated Market Area ("DMA"). TV Max is unusual among franchised cable operators in that all of its subscribers reside in multi-dwelling unit ("MDU") buildings. TV Max serves 245 MDU buildings in the Houston DMA pursuant to right-of-entry agreements with the building owners. Many of TV Max's subscribers are middle to low-income people.

3. In June 2010, TV Max was acquired by Broadband Ventures IV and the company has been under its current management only since that time. Prior to its acquisition, TV Max was in disarray both financially and operationally; since the acquisition, management has been making a concerted effort to restore the company's profitability while maintaining subscription rates at competitive levels. These efforts have included cutting the company's costs of operation as well as avoiding new costs wherever possible without sacrificing the quality of our services.

4. One component of avoidable costs identified by TV Max's management were costs stemming from retransmission consent fees being demanded by broadcast networks, including Post-Newsweek, for off-air broadcast programming. TV Max had a retransmission consent agreement with Post-Newsweek dated January 1, 2009, which agreement allowed TV Max to retransmit the signals of station KPRC-TV (Houston) over TV Max's cable system; this agreement was due to expire on December 31, 2011. In order to reduce costs – rather than pass them on to subscribers in the form of increased cable rates – during the second half of year 2011, management fomulated a plan to qualify for exemption from the retransmission consent regime under Section 76.64(e) of the Commission's rules, relating to broadcast signals received by master antenna television ("MATV") facilities. TV Max was and is well-positioned to qualify for this exemption because all of its subscribers reside in MDU buildings.

5. Beginning in November 2011, TV Max initiated a campaign to install MATV systems at all MDU buildings served by the company. Implementation of this plan involved several components, including:

    (a) Notification of the owners of MDU buildings served by TV Max that TV Max would, at its sole expense, install master antenna systems on the rooftops of the MDU buildings, which facilities (along with existing in-building distribution wiring) would be owned and controlled by the building owner, and used to offer broadcast television programming to residents at no charge. In November 2011, TV Max sent letters to the owners of all MDU buildings served by the company informing each owner of this plan, and requesting the owner's consent to installation of the MATV systems. Attachment 2 is a true and accurate photocopy of the sample letter sent to each MDU building served by TV Max. TV Max's management hoped and expected to convert all MDU buildings to MATV systems by the time the Post-Newsweek retransmission consent agreement expired on December 31, 2011, and since delivering the letters to MDU owners, TV Max has been working diligently and in good faith to complete the installation of property-owned MATV systems at each building served by the company. However, because a small number of building owners objected to the installation of the rooftop antennas, TV Max was unable to complete the MATV conversion of all buildings on schedule. TV Max admits that as of December 31, 2011, when the Post-Newsweek retransmission consent agreement expired, TV Max had only completed MATV installations on about 50% of the 245 MDU buildings served. Nonetheless, TV Max's failure to complete all installations by January 1, 2012 was *not* attributable to lack of good faith efforts to comply with applicable laws and regulations, and as of July 26, 2012, master antennas have been fully installed and are currently operational at all MDU buildings served by TV Max.

(b) Elimination of off-air signals from the Basic Tier of programming offered to TV Max subscribers for a monthly fee. Beginning in November 2011, the off-air broadcast signals, including the Signals, were de-linked from any tier of pay-television programming and since then no TV Max subscriber has billed for any off-air broadcast programming, including the KPRC-TV Signal. Since late 2011 and continuing to the present, reception of the Signal has been made available to any resident of an MDU building served by TV Max at no charge, and at the resident's option, regardless of whether or not the resident subscribes to any TV Max pay service.

6. The MATV systems installed at MDU buildings allow any resident of those buildings, regardless of whether or not the resident subscribes to any pay service of TV Max to receive off-air broadcast signals without the use of a set-top box, without transmission through TV Max's cable system, and at no charge. TV Max utilizes diplexers and filters to allow the delivery of local off-air broadcast signals to residents of MDU buildings served by the company. TV Max distributes off-air broadcast signals to occupied units in either of two ways, at the occupant's option: If the unit is equipped with a digital television or a digital converter, the occupant may receive the off-air signal directly through the building's MATV facilities; alternatively, if the unit is not equipped with a digital television or a digital converter, the occupant may receive, at no charge, an analog duplication of the off-air signal that has been inserted into the MATV system for delivery to the occupant's analog television set. In either case, residents of MDU buildings served by TV Max may receive local off-air television without any monthly charge.

7. These alternative methods of delivery off-air broadcast signals to consumers' television sets are intended to serve two corresponding purposes, respectively. First, by making available to MDU residents the reception of off-air television programming at no charge by means of MATV facilities owned and controlled by the building owners, the MATV systems are

are designed to allow TV Max to qualify for exemption from the retransmission consent regime under Section 76.64(e) of the Commission's rules, and thus to avoid the onerous and discriminatory retransmission consent fees demanded by broadcast networks, in lieu of passing those costs along to our subscribers in the form of higher cable rates. Second, the MATV systems allow TV Max to perform a public service in resolving difficult logistical and economic issues facing consumers following the mandatory analog-to-digital conversion of broadcast signals. That conversion requires that in order to continue to receive broadcast signals, but in the newly mandated digital format, consumers must purchase either a new digital television, or a digital-to-analog converter for each analog television set. Upon information and belief, many consumers cannot afford to purchase digital equipment, and even among those who do acquire digital reception or conversion devices, there are many consumers who find it difficult use them properly without assistance. By making available free digital to analog conversion of off-air signals to all residents of its MDU buildings, TV Max provides a public benefit to citizens of Houston, Texas who are unable to resolve these digital conversion issues on their own.

8. TV Max is a small cable operator and its mission is to be a high-quality, low-cost internet and television provider. We value our customers in the Houston area and work hard to retain their loyalty in an extremely challenging regulatory and competitive environment. TV Max cannot afford to raise its cable rates due to the exorbitant and ever-increasing retransmission consent fees charged by huge broadcast networks such as Post-Newsweek – particularly when, to the best of my knowledge, information and belief, the fees charged to smaller operators are at least twice as high as the fees charged to our larger competitors for the same programming content. That is why we have diligently and in good faith devoted our company's resources to qualifying all of our MDU buildings for exemption according to the Commission's rules.

I declare under penalty of perjury that I have read the Answer of TV Max to the Enforcement Complaint of Post-Newsweek Stations, Houston, Inc., that the facts described in the Answer and in this Declaration are true and correct to the best of my knowledge, information and belief, that the Answer of TV Max is well grounded in fact, warranted under current law or good faith argument for the extension, modification or reversal of current law.

Executed on August 17, 2012

Thomas Balun
CEO, TV Max

ATTACHMENT 2

WAVEVISION
Looking Toward Tomorrow

IMPORTANT MESSAGE FROM WAVEVISION

Dear Manager,

We would like to inform you that Wavevision will be installing a small antenna on a south facing location in your complex within the next few weeks at no cost to you.

The installation of this antenna enables free access to local off air channels for your tenants within the subject complex. This means that these channels will be available within your complex even in the event that cable services are interrupted by storms and/or other conditions outside of our control.

The antenna is small, about 24" X 24" and because of its sleek and stealth construction will be hardly distinguishable. We will make every effort to install it in a non conspicuous location. The installation will be completed in a quality workmanship manor by our experienced installation team.

This is a free installation for you to allow local channels for your residents and it will remain in your complex as your property for your future use.

Please notify your local managers that our personnel will try to contact them, in person over the next week or so to coordinate the installation.

If you have any questions please don't hesitate to contact me.

Best regards,

Richard Gomez
Operations Manager
Wavevision

10300 Westoffice Drive, Suite 200 Houston, Texas (713) 587-1200

Received & Inspected
AUG 20 2012
FCC Mail Room

CERTIFICATE OF SERVICE

I certify that on this 17th day of August 2012, I caused the foregoing Answer of TV Max to Enforcement Complaint of Post-Newsweek Stations, Houston, Inc. to be served by registered U.S. mail, overnight delivery, return receipt requested, except where email is indicated, on the following:

Jennifer A. Johnson, Esq.
Eve R. Pogoriler, Esq.
Michael P. Beder, Esq.
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